

Final

**Rhode Island Supreme Court  
Ethics Advisory Panel Op. 2016-06  
Issued June 9, 2016**

**FACTS**

The inquiring attorney filed a lawsuit in 2014 on behalf of Client against an individual (Individual Defendant) and his/her corporation (Corporate Defendant). Both defendants defaulted, and judgment was entered against both of them. An execution issued, but efforts to locate assets of the defendants were fruitless. Individual Defendant stated an intention to file bankruptcy, and at Client's direction, the inquiring attorney stopped pursuing both defendants. Client remains a client of the inquiring attorney.

Recently, the inquiring attorney received a phone call from an individual who discussed a claim he wished to pursue, and who sought the inquiring attorney's advice on how best to pursue it. After they further discussed the possible claims, the inquiring attorney asked the prospective client to identify the putative defendants. The prospective client named a limited liability corporation and its sole shareholder, Individual Defendant, who is Client's judgment debtor. The inquiring attorney states that the corporate status of the limited liability corporation is under revocation, and believes that the revocation expands the potential claims the prospective client has against Individual Defendant. The inquiring attorney further states that he/she learned from the prospective client the location and general description of the new business interests of Individual Defendant. He/she believes this information would assist Client in resuming pursuit of the judgment debt owed to Client by Individual Defendant. The inquiring attorney has declined to represent the prospective client because of the conflict presented by simultaneously pursuing Individual Defendant on behalf of Client and on behalf of the prospective client.

**ISSUE PRESENTED**

The inquiring attorney asks whether he/she may disclose to Client the information he/she learned from the prospective client about Individual Defendant in order to ascertain whether Client would choose to resume pursuit of Individual Defendant's judgment debt to Client.

**OPINION**

Rule 1.18 of the Rules of Professional Conduct does not permit the inquiring attorney to disclose to Client information he/she learned about Client's judgment debtor during the consultation with the prospective client.

REASONING

Lawyers have certain ethical obligations to prospective clients, even if no lawyer-client relationship is established. Those obligations are governed by Rule 1.18 entitled “Duties to prospective client.” The Rule states:

**Rule 1.18. Duties to prospective client.** (a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

Rule 1.18 provides prospective clients with some, but not all, protections afforded clients. During an initial consultation with a lawyer, a prospective client will typically disclose information that assists the lawyer in determining whether there is a conflict of interest with an existing or a former client, and whether the lawyer will undertake the representation. Rule 1.18(b) prohibits the lawyer from using or revealing that information except as permitted by Rule 1.9, even if the lawyer or the client decides not to proceed with the representation. Thus, lawyers have an obligation of confidentiality to prospective clients.

It is apparent from the cross-reference to Rule 1.9 (“Duties to former client”) in Rule 1.18(b) that the obligation of confidentiality to a prospective client is more akin to that afforded to a former client than to a current client. The difference is this: With limited exceptions set forth in Rule 1.6 (“Confidentiality of information”), a lawyer may neither disclose nor use information related to the representation of a current client under Rules 1.7 (“Conflict of interest: Current clients”) and 1.6, while under Rule 1.9, a lawyer may use, but not reveal, information relating to the representation of a former client when the information has become generally known.

In the instant inquiry, the inquiring attorney learned from the prospective client that Client’s judgment debtor, Individual Defendant, is the sole shareholder of a limited liability corporation, and may not be bankrupt after all. The inquiring attorney believes this information would be useful to Client’s decision to renew efforts to recover on the judgment against Individual Defendant, and would like to reveal this information to Client. Rule 1.18(b), however, prohibits the inquiring attorney from doing so. The Panel concludes that the inquiring attorney is not permitted to disclose to Client information he/she learned about Client’s judgment debtor during the consultation with the prospective client.